

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services)	CC Docket No. 98-67
And Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	

To: The Commission

**TELECOMMUNICATIONS FOR THE DEAF, INC. AND
DEAF AND HARD OF HEARING CONSUMER ADVOCACY NETWORK
COMMENTS REGARDING
VIDEO RELAY SERVICE COMPENSATION RATES PROPOSED BY
THE NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.**

Telecommunications for the Deaf, Inc. ("TDI") and the Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN") hereby submit their comments regarding the National Exchange Carrier Association's ("NECA's") Annual Submission of TRS Payment and Revenue Requirements, for July 2005 – June 2006 ("NECA Proposal") submitted on April 25, 2005. By Public Notice, DA 05-1175, released April 28, 2005 (the "Public Notice"), the Commission asked that comments be filed on or before May 13, 2005.

I. Background

TDI is a national advocacy organization that seeks to promote equal access in telecommunications and media for the 28 million Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind so that they may attain the opportunities and benefits of the telecommunications revolution to which they are entitled. TDI believes that only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

DHHCAN, established in 1993, serves as the national coalition of organizations¹ representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. DHHCAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

II. Discussion

The NECA Proposal calls for a Video Relay Service (“VRS”) reimbursement rate of \$5.924 for the 2005-2006 fund year.² If adopted by the Commission this would be a \$1.672 reduction in the compensation rate from the \$7.596 compensation rate in effect for the 2004-2005 fund year.³ The NECA Proposal also reports the following at footnote 32:

The average cost per minute appears to be driven by the cost and demand characteristics of a single provider. The average produced by the traditional rate development methodology using all providers’ data indicates that only one provider’s cost per minute is below average, while all other providers’ costs are above average. Because of the number of open issues before the FCC related to VRS, e.g., answer performance and interoperability and the timing of their resolution, and the likelihood of their adding costs to the provision of TRS, the Commission may wish to explore alternatives to traditional rate calculation. To that end, NECA also calculated the VRS reimbursement rate excluding the low

¹ The member organizations of DHHCAN include the American Association of the Deaf-Blind (AADB), the American Deafness and Rehabilitation Association (ADARA), the Association of Late-Deafened Adults (ALDA), the American Society for Deaf Children (ASDC), the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Communication Service for the Deaf (CSD), Deaf Seniors of America (DSA), Gallaudet University, Gallaudet University Alumni Association (GUAA), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), National Catholic Office of the Deaf (NCOD), Registry of Interpreters for the Deaf (RID), Telecommunications for the Deaf Inc. (TDI), USA Deaf Sports Federation (USADSF), and The Caption Center/WGBH.

² NECA Proposal at 16-18.

³ Public Notice at 1.

cost provider. Without that VRS provider, the reimbursement rate would be \$7.061, a difference of \$1.137.⁴

TDI and DHHCAN are concerned that the proposed reduction of the VRS compensation rate to \$5.924 would result in a deterioration in the availability of VRS provided to consumers. Specifically, the low cost VRS provider referred to by NECA usually has longer wait times—previously 20 to 30 minutes, now three to ten minutes—before an operator answers the call, as well as limited hours of operation. By not hiring the interpreters needed to reduce waiting time and by limiting hours of operation, the low cost provider has been able to cut costs, and these lower costs affected NECA’s calculations. If the compensation rate is reduced to the degree proposed by NECA, TDI and DHHCAN are concerned that the other providers may be forced to reduce their hours of operation as well as hire fewer interpreters, which would result in longer wait times.

A reduction in the availability of service, which may very well result from decreased VRS compensation rates, is contrary to the functional equivalency requirements of the Americans with Disabilities Act (“ADA”).⁵ The main purpose of the ADA was to facilitate the integration of people with physical and other disabilities into the mainstream of society so that no person would be left behind. Title IV of the ADA addresses access to telecommunications by deaf and hard of hearing persons. Section 401 of Title IV, which was codified in Section 225 of the Communications Act of 1934, as amended (the “Act”),⁶ requires that Telephone Relay Service (“TRS”) be offered and defines TRS as:

⁴ *Id.* at 17 n.32.

⁵ PL 101-336, July 26, 1990.

⁶ 47 U.S.C. § 225.

[T]elephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio.⁷

In short, the ADA requires that TRS services, including VRS, be functionally equivalent to voice telephone services. Because TRS services, including VRS, must be functionally equivalent to voice services, all of the benefits enjoyed by subscribers of voice telephone services must also be made available to subscribers of all TRS services, including VRS.

On February 25, 2005, the National Video Relay Service Coalition (“NVRSC”) filed comments in this docket supporting a requirement for VRS speed of answer that would be functionally equivalent to voice telephone service. TDI and DHHCAN are members of the NVRSC and signed those comments. As discussed therein, voice telephone users expect and receive instant dial tone when they pick up the telephone. VRS wait times of three to ten minutes do not qualify as functionally equivalent service.

In its October 18, 2004 comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”),⁸ the NVRSC filed comments in support of mandatory VRS. The NVRSC explained that for VRS to be functionally equivalent to voice telephone service, not only must there be a VRS speed of answer requirement of 85 percent of all calls being answered within 10 seconds, but VRS service must be available 24 hours a day, seven days a week. Since

⁷ 47 U.S.C. § 225(a)(3).

⁸ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, CC Docket No. 90-571, CC Docket No. 98-67, CG Docket No. 03-123, FCC 04-137 (rel. June 30, 2004).

voice telephone users have 24/7 service, VRS users must have the same. TDI and DHHCAN signed the NVRSC comments.

The NECA Proposal to decrease the VRS reimbursement rate to \$5.924 is heavily weighted by the reduced costs associated with a VRS provider that offers service with longer wait times and limited availability of service. Therefore, TDI and DHHCAN respectfully request that the Commission adopt a VRS reimbursement rate that would compensate providers for greater availability of service and shorter wait times.

III. Conclusion

In view of the foregoing, TDI and DHHCAN (1) support the alternate VRS reimbursement rate of \$7.061 mentioned in footnote 32 of the NECA Proposal; (2) urge the Commission to address the issues raised in the June 30, 2004 FNPRM, including speed of answer, prior to the adoption of the VRS reimbursement rate for the 2005-2006 fund year; and (3) readjust the VRS reimbursement rate during the 2005-2006 fund year once the VRS providers can offer cost data for the provision of VRS service that satisfies speed of answer requirements and is available 24/7.

Respectfully submitted,

/S/

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